**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

GeBBS HEALTHCARE SOLUTIONS, INC.,

Plaintiff,

v.

ORION HEALTHCORP, INC.,

Defendant.

Case No. 16-cv-02206-GHW

**FIRST AMENDED ANSWER AND COUNTERCLAIMS**

Defendant Orion HealthCorp, Inc. ("Orion"), by and through its attorneys, hereby responds to plaintiff's Complaint (the "Complaint") as follows:

1. Denied.

## PARTIES

2. Orion lacks sufficient knowledge or information to form a belief as to the truth of the allegations of paragraph 2. To the extent paragraph 2 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

3. Orion denies having its principal place of business in Georgia. All of the other allegations of paragraph 3 are admitted.

4. Admitted.

5. Admitted.

6. Admitted.

## BACKGROUND TO THE DISPUTE

### The Original Agreement and Amendments

7. Orion denies that RMI Physician Services Corporation is a predecessor of Orion. All of the other allegations of paragraph 7 are admitted.

**Addendum 3 Supersedes All Prior Agreements**

8. Orion admits that the Original Agreement underwent multiple amendments. Orion further admits that it executed Addendum 3. All of the other allegations of paragraph 8 are denied.

9. Admitted.

10. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 10 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

11. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 11 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

12. Denied.

13. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 13 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

14. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 14 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

15. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 15 may be deemed to assert

factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

16. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 16 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

17. Orion admits that it executed Addendum 3 and refers to that document for its content, meaning and import. To the extent paragraph 17 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

**GeBBS Provides Services to Orion and Orion Refuses to Pay**

18. Denied.

19. Denied.

20. Denied.

21. Denied.

**GeBBS Provides Notice of Default**

22. Orion admits that it received the notice described in the first sentence of paragraph 22 and refers to that document for its content, meaning and import. To the extent paragraph 22 may be deemed to assert factual allegations directed at, or purporting to impute liability to, Orion, those allegations are denied.

23. Denied.

24. Orion admits that it made payment to GeBBS in December 2015. All of the other allegations of paragraph 24 are denied.

25. Denied.

26. Denied.

27. Denied.

28. Denied.

**FIRST CAUSE OF ACTION**
**(Breach of Contract against Orion)**

29. Orion repeats and realleges paragraphs 1 through 28 of its Answer to the Complaint as though fully set forth herein.

30. Admitted.

31. Denied.

32. Denied.

33. Denied.

**AFFIRMATIVE DEFENSES**

**First Affirmative Defense**

The Complaint fails to state a claim upon which relief can be granted.

**Second Affirmative Defense**

Orion's nonperformance, if any, was excused by virtue of GeBBS' breach of the Agreement.

**Third Affirmative Defense**

GeBBS' claim is barred, in whole or in part, by the doctrines of novation, waiver, release, and/or accord and satisfaction.

**Fourth Affirmative Defense**

GeBBS' claim is barred, in whole or in part, by the doctrines of equitable estoppel and/or laches.

**Fifth Affirmative Defense**

GeBBS' damages, if any, must be reduced or eliminated as setoff.

**Reservation**

Orion specifically reserves the right to amend, modify, supplement and expand these affirmative defenses as additional facts are discovered.

**COUNTERCLAIMS**

1. With these counterclaims, defendant Orion HealthCorp, Inc. ("Orion"), seeks to hold plaintiff GeBBS Healthcare Solutions, Inc. ("GeBBS") liable for multiple breaches of the agreement between parties and other egregious conduct described herein.

**PARTIES**

2. Orion is a Delaware corporation with its principal place of business in Texas.

3. Upon information and belief, GeBBS is a New Jersey corporation having its principal place of business in California.

**JURISDICTION AND VENUE**

4. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1367 because the counterclaims arise out of the transactions and occurrences that form the basis of Plaintiff's claims.

5. Venue is proper in this judicial district pursuant to an agreement between the parties, and pursuant to 28 U.S.C. §1391(b), because many of the acts, omissions, conduct, and combinations thereof occurred in this judicial district.

**FACTS COMMON TO ALL COUNTS**

6. Orion, both directly and through its network of subsidiaries, is in the business of providing billing, collections, and management services to physicians and medical practices.

7. With respect to its medical billing and collections work, Orion typically utilizes a 'results oriented' fee structure whereby it is paid a percentage of the funds it recovers for its customers. In simple terms, the more Orion collects, the more it gets paid.

8. GeBBS is also in the business of providing medical billing and collections services. Among other things, GeBBS provides support to U.S.-based medical billing companies through a foreign labor force.

9. On or about June 22, 2006, an affiliate of GeBBS entered into a Master Services Agreement (the "MSA") with a medical billing company known as RMI Physician Services Corporation ("RMI").

10. Pursuant to the MSA, GeBBS was to provide "business process outsourcing services" to RMI. In effect, the MSA contemplated that GeBBS would act like a subcontractor and use its foreign labor force to complete work for RMI's customers.

11. RMI became a wholly owned subsidiary of Orion in 2008.

12. On October 11, 2011, the parties signed an Addendum to the MSA that, among other things, designated GeBBS as the exclusive provider of outsourcing services for Orion and its subsidiaries.

13. Orion and GeBBS signed a second Addendum ("Addendum 2") to the MSA on July 8, 2012. Although it made clear that GeBBS would remain the exclusive provider of outsourcing services to Orion, Addendum 2 (a) reduced the amount of

GeBBS' fees; and (b) noted that if GeBBS failed to meet certain performance benchmarks, the parties would discuss an additional rate adjustment.

14. After Addendum 2 was signed, the quality of GeBBS' work began to decline.

15. In or around the summer of 2013, Orion started carefully scrutinizing GeBBS' monthly invoices and reducing the amount of its payments to account for unauthorized charges and poor performance.

16. GeBBS accepted the reduced payments and did not declare Orion in default under the MSA.

17. Although their relationship had become increasingly strained, the parties sought to resolve their differences by signing a third Addendum (the "Addendum 3") to the MSA, which took effect on April 1, 2014.

18. With respect to GeBBS' fess, Addendum 3 provided that, in exchange for its out sourcing services (the "Services"), GeBBS would recieve a fix percentage of the money that Orion was paid by its customers.

**COUNT I**
**(Breach of Contract--Nonperformance)**

19. Orion repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

20. Pursuant to Paragraph 3 of Addendum 3, GeBBS was required to:

> [P]rovide and complete the Services (i) in full conformity with this Addendum 3 and any applicable [Orion] contract for which it is working on and undertaken; and (ii) using competent and qualified personnel in a professional and workmanlike manner, in accordance with the highest prevailing industry standards and practices for the performance of similar services.

21. GeBBS breached its obligation under Paragraph 3 of Addendum 3 in numerous respects, including by failing to (a) devote sufficient personnel and resources to its performance of the Services; (b) process new charges in a timely manner; (c) promptly pursue unpaid balances; and (d) maintain accurate records.

22. As a result of GeBBS' aforementioned failures, Orion has suffered damages, including, but not limited to, lost revenue in the form of customer fees that Orion would have received but for GeBBS' breaches.

WHEREFORE, Orion demands that judgment be entered against GeBBS in an amount to be determined at trial, but estimated to exceed $500,000.00, together with costs and expenses of suit, including, without limitation, reasonable attorneys' fees, and all other legal and equitable relief that the Court may deem appropriate.

**COUNT II**
**(Breach of Contract--Improper Termination)**

23. Orion repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

24. Addendum 3 set forth three different ways in which GeBBS could terminate the MSA.

25. First, pursuant to Paragraph 5(a) of Addendum 3, GeBBS could terminate the MSA "for convenience upon no less than 365 days prior written notice".

26. Second, under Paragraph 5(b) of Addendum 3, GeBBS could terminate the MSA upon Orion's "material breach" after providing Orion with no less than ninety days in which to cure the default. However, in the event it chose to do so, GeBBS agreed to "continue its work on the existing Client accounts" until Orion was able to find a replacement.

27. Third, Paragraph 5(c) of Addendum 3, provides that:

> If [Orion] defaults in the payment when due of any undisputed amounts under this Addendum 3 and does not cure the default within ten (10) days after receiving written notice of the default, then GeBBS may, by giving written notice to [Orion], terminate this Addendum 3, and cease providing Services, as of a date specified in the notice of termination.

28. In or around December 2015, GeBBS purported to terminate the MSA pursuant to Paragraph 5(c) of Addendum 3 based on Orion's supposed failure to pay amounts GeBBS claimed as due. However, at the time GeBBS canceled the Agreement, there were no undisputed amounts due and owing to GeBBS from Orion.

29. GeBBS premature and improper termination under Paragraph 5(c) of Addendum 3 constitutes a material breach of the MSA.

30. As a result of GeBBS' aforementioned breach, Orion has suffered damages, including, but not limited to, lost revenue in the form of additional customer fees that Orion would have received but for GeBBS' breach.

WHEREFORE, Orion demands that judgment be entered against GeBBS in an amount to be determined at trial, but estimated to exceed $500,000.00, together with costs and expenses of suit, including, without limitation, reasonable attorneys' fees, and all other legal and equitable relief that the Court may deem appropriate.

## COUNT III
## (Fraud)

31. Orion repeats and realleges each and every allegation contained in the foregoing paragraphs as if fully set forth herein.

32. In or around December 2015, after a dispute arose over the amount of the fees due to GeBBS under the MSA, the parties agreed that if Orion made a partial

payment against the balance purportedly due, GeBBS would continue to perform the Services for a reasonable time while Orion sought to find a replacement for GeBBS.

33. At the time it entered into that agreement, GeBBS had no intention of continuing to perform the Services for Orion. Indeed, almost immediately after it received the agreed-upon payment, GeBBS completely stopped working.

34. GeBBS made material misrepresentations (the "Misrepresentations") to Orion, including that GeBBS would continuing performing the Services in exchange for a partial payment from Orion.

35. The Misrepresentations made by GeBBS to Orion were knowingly false, and GeBBS intended for Orion to rely on the Misrepresentations.

36. Orion justifiably relied on the Misrepresentations to its detriment.

WHEREFORE, Orion demands that judgment be entered against GeBBS in an amount to be determined at trial, but estimated to exceed $500,000.00, together with costs and expenses of suit, including, without limitation, reasonable attorneys' fees, and all other legal and equitable relief that the Court may deem appropriate.

New York, New York
October 11, 2106

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